



## DEPARTMENT OF VETERANS AFFAIRS

8320-01

### 38 CFR Part 21

#### RIN 2900-AQ61

### Elimination of On-the-Job Training and Apprenticeship Trainee Certification

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations that contain the requirements for certification of attendance at on-the-job training and apprenticeship programs under the Veterans Apprenticeship and Labor Opportunity Reform Act (VALOR Act). Section 3 of this law eliminated the requirement that trainees (veterans and other eligible persons who receive the training) certify attendance at on-the-job or apprentice training prior to disbursement of a training assistance allowance, thereby placing the responsibility solely on the employer to certify attendance in on-the-job and apprenticeship programs. Although it does not apply to chapter 30, we propose to eliminate the regulatory trainee certification requirement for chapter-30 trainees as well.

**DATES:** Comments must be received on or before [Insert date 60 days after date of publication in the *FEDERAL REGISTER*].

**ADDRESSES:** Written comments may be submitted through [www.Regulations.gov](https://www.Regulations.gov); by mail or hand-delivery to Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1064, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AQ61 – Elimination of On-the-Job Training

and Apprenticeship Trainee Certification." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Cheryl Amitay, Chief, Policy and Regulation Development Staff (225C), Education Service, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202) 461-9700. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** Prior to the enactment of Pub. L. 115-89, 131 Stat. 1279, "Veterans Apprenticeship and Labor Opportunity Reform Act" (VALOR Act), 38 U.S.C. 3680(c) required that veterans and other eligible persons pursuing approved programs of on-the-job training (OJT) or apprenticeship training (trainees) certify actual attendance and that training establishments certify that a trainee was enrolled in and pursuing a program of apprenticeship or other on-job training. VA implemented former section 3680(c) in 38 CFR 21.4138(e)(2), 21.5133(b), and 21.7640(a)(3). VA also required dual certification for chapter-30 apprenticeship and OJT programs in 38 CFR 21.7140(c)(2).

Section 3 of Pub. L. 115-89 amended sec. 3680(c) to eliminate the trainee's attendance certification requirement. Consequently, only the training establishment is required to certify the trainee's OJT or apprenticeship training. Congress eliminated the trainee certification requirement to "reduce the administrative burden on veterans while

maintaining attendance certification" to "ensure GI Bill benefits are only paid to individuals who are abiding by the benefit requirements." H.R. Rep. No. 115-398, at 4 (2017). VA therefore proposes to amend 38 CFR 21.4138(e)(2), 21.5133(b), and 21.7640(a)(3) by removing references to the requirement for a trainee's certification.

Section 3034 of title 38, U.S.C., sets forth general provisions regarding the administration of the chapter 30 Montgomery GI Bill program. Section 3034(a)(1) provides that the general administration of educational benefits provisions contained in chapter 36 apply to the chapter 30 program, except for sec. 3680(c), among other provisions. Although 38 U.S.C. 3034(a)(1) specifically excepts 38 U.S.C. 3680(c) from application to the provision of educational assistance under chapter 30, VA previously promulgated 38 CFR 21.7140(c)(2)(ii) to require employer and trainee certification for apprenticeship and OJT programs under chapter 30. (VA apparently interpreted sec. 3034(a)(1) as not necessarily prohibiting VA from requiring dual certifications but, rather, as not requiring VA to require dual certifications pursuant to sec. 3680(c).)

VA proposes to amend 38 CFR 21.7140(c)(2)(ii) to eliminate the trainee certification requirement for apprenticeship and OJT programs under chapter 30. We are proposing to amend section 21.7140(c)(2) so that the certification requirement would be consistent across all VA education and training programs and with Congress' intent to reduce the administrative burden for trainees enrolled in apprenticeship and OJT programs. H.R. Rep. No. 115-398, at 4.

VA also proposes to amend the authority citations for 38 CFR 21.4138(e) and 21.5133 to explain that 38 U.S.C. 3680(c) is an authority for these regulations. Also, VA would add an authority citation for § 21.7140(c)(2) to explain that 38 U.S.C. 3034 and

3680(g) are the authority for this regulation. Finally, VA would add the Office of Management and Budget (OMB) information-collection control number for 38 CFR 21.4138, 21.5133, 21.7140, and 21.7640.

These proposed amendments would necessitate revision of the current OMB approved collection of information, OMB Control No. 2900-0178, VA Form 22-6553d-1, “Monthly Certification of On-The-Job and Apprenticeship Training.” Both the trainee and the training establishment must currently complete and sign the form reporting the number of hours the trainee has worked and, if applicable, the date the trainee terminated training. Based on this form, VA either continues a trainee’s education benefits without changes or amends or terminates benefits. We propose to revise this information collection to remove the trainee’s certification based on Pub. L. 115-89.

#### **Executive Orders 12866, 13563, and 13771**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis

are available on VA's Web site at <http://www1.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date." This proposed rule is expected to be an EO 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.

### **Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). This rulemaking does not change VA's policy or provisions involving any small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

### **Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires at 2 U.S.C. 1532 that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the

collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. See *also* 5 CFR 1320.8(b)(3)(vi).

This proposed rule includes provisions involving a revised collection of information under the Paperwork Reduction Act of 1995 that requires approval by OMB. OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection requirement in §§ 21.4138(e)(2), 21.5133(b), 21.7140(c)(2), and 21.7640(a)(3) is currently approved by OMB and has been assigned OMB control number 2900-0178.

*Title:* Monthly Certification of On-The-Job and Apprenticeship Training (VA Form 22-6553d & 22-6553d-1).

*Summary of collection of information:* The amended collection of information in proposed §§ 21.4138(e)(2), 21.5133(b), 21.7140(c)(2), and 21.7640(a)(3) would require only the training establishment to complete and submit VA Form 22-6553d or 22-6553d-1 to certify a trainee's on-the-job training or apprenticeship training. This proposed rule would eliminate the requirement for the trainee to complete and submit this form to certify training. The proposed amendment to §§ 21.4138(e)(2), 21.5133(b), 21.7140(c)(2), and 21.7640(a)(3) would decrease the estimated annual number of respondents and consequently reduce the estimated total annual reporting and recordkeeping burden.

The estimated annual burden for the revised collection of information would be determined as follows:

*Description of need for information and proposed use of information:* There would be no change in the need for information and proposed use of information collected for OMB-approved Control Number 2900-0178 (VA Form 22-6553d or 22-6553d-1). VA Form 22-6553d or 22-6553d-1 is used to report the number of hours the trainee has worked and, if applicable, to report the date the trainee terminated training.

*Description of likely respondents:* The certifying officials at VA approved training establishments would be the sole respondents as a result of the proposed rule. They are the only parties that would complete and sign VA Form 22-6553d or 22-6553d-1 to certify a trainee's on-the-job training or apprenticeship training as the proposed rule, which would implement Pub. L. 115-89, would eliminate the requirement that trainees also complete and sign the form. This change, therefore, would reduce the number of respondents.

*Estimated number of respondents per month/year:* 3,795 annually.

*Estimated frequency of responses per month/year:* 9 responses per respondent.

*Estimated number of responses per month/year:* 34,155 annually.

*Estimated average burden per response:* The estimated average burden per response for OMB-approved Control Number 2900-0178 (VA Form 22-6553d or 22-6553d-1), would be 10 minutes, rather than 20 minutes when there were two respondents required for each form.

*Estimated total annual reporting and recordkeeping burden:* 5,693 hours.

*Estimated total annual respondent burden cost:* \$142,211

This proposed rule would reduce the current annual respondent burden costs from \$283,348 to \$142,211, resulting in an information collection burden costs savings of \$141,137.

### **Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.027, Post-9/11 Veterans Educational Assistance; 64.028, Post-9/11 Veterans Educational Assistance; 64.032, Montgomery GI Bill Selected Reserve; Reserve Educational Assistance Program; 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance.

### *List of Subjects in 38 CFR - Part 21*

Administrative practice and procedure; Armed forces; Civil rights; Claims; Colleges and universities; Conflict of interests; Defense Department; Education; Employment; Grant programs-education; Grant programs-veterans; Health care; Loan Programs-education; Loan programs-veterans; Manpower training programs; Reporting and recordkeeping requirements; Schools; Travel and transportation expenses; Veterans; Vocational education; Vocational rehabilitation.

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of



Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on February 20, 2020, for publication.

Luvenia Potts  
Regulation Development Coordinator  
Office of Regulation Policy & Management  
Office of the Secretary  
Department of Veterans Affairs

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 21 as follows:

## **PART 21—VOCATIONAL REHABILITATION AND EDUCATION**

### **Subpart D—Administration of Educational Assistance Programs**

1. The authority citation for part 21, Subpart D continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 33, 34, 35, 36, and as noted in specific sections.

2. Amend § 21.4138 by:

- a. Revising paragraph (e)(2)(ii);
- b. Revising the authority citation for paragraph (e); and
- c. Revising the information collection approval at the end of the section.

The revisions read as follows:

#### **§ 21.4138 Certifications and release of payments.**

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ii) VA has received from the training establishment a certification of hours worked.

\* \* \* \* \*

(Authority: 38 U.S.C. 5113, 3680(b), 3680(c), 3680(g))

\* \* \* \* \*

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0178 and 2900-0604)

## **Subpart G—Post-Vietnam Era Veterans’ Educational Assistance Under 38 U.S.C.**

### **Chapter 32**

3. The authority citation for part 21, Subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 32, 36, and as noted in specific sections.

4. Amend § 21.5133 by:

- a. Revising paragraph (b)(2);
- b. Revising the information collection approval at the end of the section; and
- c. Revising the authority citation at the end of the section.

The revisions read as follows:

#### **§ 21.5133 Certifications and release of payments.**

\* \* \* \* \*

(b) \* \* \*

(2) VA has received from the training establishment a certification of hours worked. Generally, this certification will be required monthly, resulting in monthly payments.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control numbers 2900-0178 and 2900-0465)

(Authority: 38 U.S.C. 3680(c), 3680(g), 3689)

**Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)**

5. The authority citation for part 21, Subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, and as noted in specific sections.

6. Amend § 21.7140 by:

- a. Revising paragraph (c)(2)(ii);
- b. Adding an authority citation for paragraph (c)(2); and
- c. Revising the information collection approval at the end of the section.

The revisions and addition read as follows:

**§ 21.7140 Certifications and release of payments.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) VA has received from the training establishment a certification of hours worked.

(Authority: 38 U.S.C. 3034, 3680(g))

\* \* \* \* \*

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0178, 2900-0695, and 2900-0698)

## **Subpart L—Educational Assistance for Members of the Selected Reserve**

7. The authority citation for part 21, Subpart L continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, and as noted in specific sections.

8. Amend § 21.7640 by:

- a. Revising paragraph (a)(3)(ii); and
- b. Revising the information collection approval at the end of the section.

The revisions read as follows:

### **§ 21.7640 Release of payments.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(ii) VA has received certification by the training establishment of the reservist's hours worked.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control numbers 2900-0073 and 2900-0178)

[FR Doc. 2020-03884 Filed: 2/27/2020 8:45 am; Publication Date: 2/28/2020]